

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

BRUCE A. BROWN, #1047152,

Petitioner,

v.

ACTION NO. 2:20cv485

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner Bruce A. Brown (“Brown”), a Virginia inmate, submitted a *pro se* petition, pursuant to 28 U.S.C. § 2254, seeking release from the Norfolk City Jail or transfer to the Virginia Department of Corrections. ECF Nos. 1, 8. Respondent filed a motion to dismiss the petition with a memorandum in support arguing the petition is barred due to Brown’s failure to exhaust state court remedies. ECF Nos. 13–14.

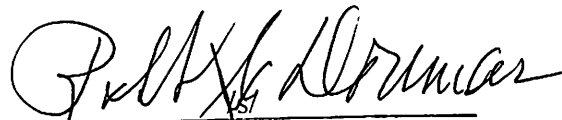
The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed March 9, 2021, recommends that Brown’s federal petition be dismissed without prejudice to Brown’s refileing his federal petition after he has proceeded in the Virginia state courts. ECF No. 16, at 3 (citing *Slayton v. Smith*, 404 U.S. 53, 54 (1971)). Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge, and no objections have been filed.

The Court, having reviewed the record, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 13, is **GRANTED**, and Brown's federal petition, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE** to Brown's refiling his federal petition after he has proceeded in the Virginia state courts.

Brown has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003).

Brown is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Brown intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. Brown may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this final order to Brown and counsel of record for respondent.



Robert G. Doumar
Senior United States District Judge

Norfolk, Virginia
April 15, 2021